Exhibit 41

Excerpts from the June 30, 2020 Deposition of Owen Astrachan
REDACTED

1   UNITED STATES DISTRICT COURT

2   DISTRICT OF NEVADA

3

4

5   ORACLE USA, INC., et al.,

6   Plaintiffs,

7   vs.   Case No.

                                      2:10-cv-00106-LRH-VCF

8   RIMINI STREET, INC., et al.,

9   Defendants.

     _____/

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14   VIDEO-RECORDED DEPOSITION OF OWEN ASTRACHAN, PH.D.

15   REMOTE ZOOM PROCEEDING

16   Raleigh, North Carolina

17   Tuesday, June 30, 2020

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23   REPORTED BY:

24   LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

25   Pages 1 - 281   Job No. 4135801
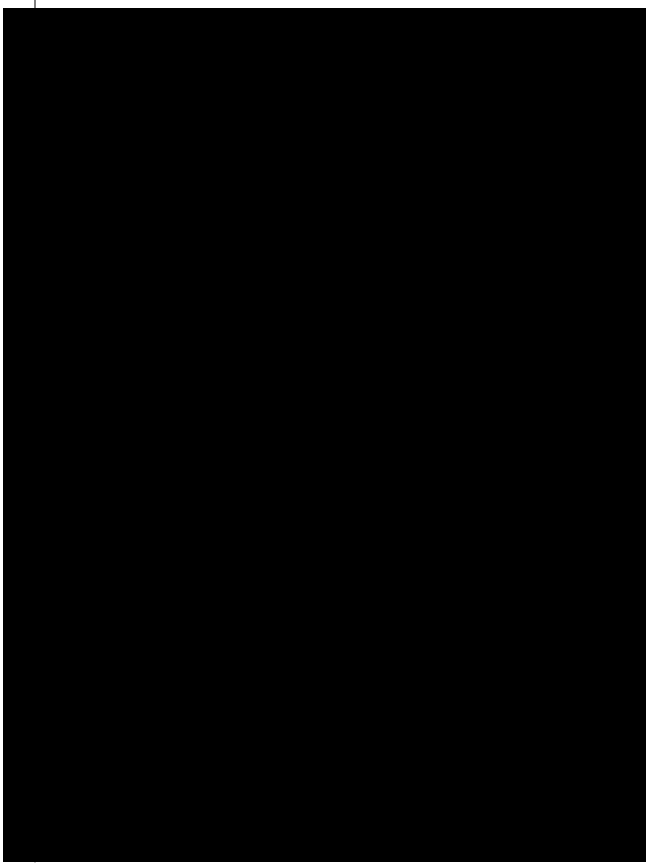
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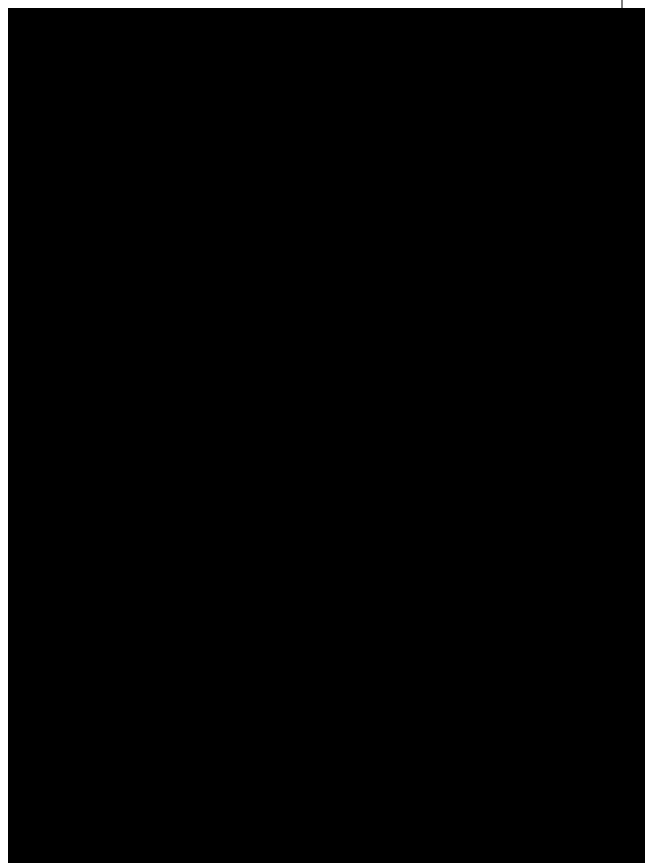
1 applying more detail.

2   Q. Understood.

3   When did you begin to work on your supplemental

4 report which is dated June 26, 2020?

5   A. Soon after Ms. Frederiksen-Cross served her what   08:23:35

6 I believe is called a surrebuttal report. And I'd have

7 to look at my logs and file to see precisely when, but it

8 was reasonably or immediately soon thereafter.

9   Q. You testified that you prepared for your

10 deposition in Rimini II for between five and seven days   08:23:57

11 running between six to nine hours a day.

12   Do you recall that?

13   A. That sounds about right.

14   Q. And was your preparation for this deposition

15 today similar in terms of time?   08:24:11

16   A. It was likely not quite as much time in terms of

17 meeting with counsel, since I was at home so we would

18 meet by Zoom. And in the previous cases, I was located

19 where those depositions were going to be taken place.

20   So perhaps more of that time was spent with me   08:24:31

21 by myself rather than with counsel, although we did have

22 many Zoom meetings as part of preparing for the

23 deposition.

24   Q. How many Zoom meetings do you think you had with

25 counsel in preparation for this deposition?   08:24:50

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1   A More than five and fewer than twenty

2   Q Okay Do you have an estimate for the total

3 amount of time that you've spent with counsel preparing

4 for this deposition?

5   A I haven't added up all the numbers in the   08:25:02

6 spreadsheet of data that I keep for that I'm guessing

7 that it's probably 40, 50 hours

8   Q Is that an estimate or a guess?

9   A It's a rough estimate It's not a guess

10   Q In your Rimini II deposition, you testified that   08:25:29

11 you had never looked at any Rimini servers Does it

12 remain correct that you've never looked at any Rimini

13 servers?

14   MR VANDEVELDE: Misstates testimony

15   THE WITNESS: I'm not sure what you mean by   08:25:44

16 "looked " Do you mean I traveled to Rimini Street and

17 observed their servers?

18   Q BY MR SMITH: Correct Inspected

19   MR VANDEVELDE: Objection Vague, misstates

20 prior testimony   08:25:55

21   THE WITNESS: I have not traveled to Rimini

22 Street

23   Q BY MR SMITH: You also testified during your

24 August 2018 deposition that you have never looked at any

25 Rimini hardware   08:26:06

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1   Does that remain correct?

2   MR. VANDEVELDE: Objection. Misstates prior

3 testimony.

4   THE WITNESS: Again, if by "looked at" hardware,

5 you mean I was in the room where I could see the   08:26:15

6 hardware, that's correct, I have not done that.

7   Q. BY MR. SMITH: And is it correct that you have

8 never inspected any of the servers of any of Rimini's

9 customers?

10   MR. VANDEVELDE: Objection. Vague.   08:26:30

11   THE WITNESS: Again, if by "inspect" you mean I

12 was in the room with them, I have not seen them. If by

13 "inspect," you mean had access to that company, never.

14   Q. BY MR. SMITH: Okay. Have you ever logged into

15 any Rimini server at any time?   08:26:47

16   A. I have not logged into any such server. I do

17 not have access.

18   Q. Have you ever logged into any server of any

19 Rimini customer at any time?

20   A. I have not. Again, I do not have access   08:27:02

21 credentials to Rimini Street's client servers.

22   Q. You testified in your August deposition in 2018

23 that your general technical analysis was based on what

24 Rimini engineers and their documentation told you about

25 Rimini processings.   08:27:23

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1   Do you recall that?

2   MR VANDEVELDE: Objection Misstates prior

3 testimony

4   If you're going to ask about those prior

5 testimonies, please show it to him so he can confirm that   08:27:31

6 you're accurately reading it

7   THE WITNESS: I don't remember all the wording

8 that's in my deposition or my report from Rimini II

9 What you're stating sounds generally correct, but I'd

10 have to look at the wording to see if it's precise   08:27:48

11   Q BY MR SMITH: Sure And I'm not particularly

12 interested in the exact wording, but let me just ask you

13 this question: Is it true that your technical analysis

14 of Rimini's processes for this proceeding was based upon

15 what Rimini engineers and Rimini documentation told you?   08:28:05

16   A Yes, I think that's basically correct

17   Q Are your opinions based upon anything else other

18 than what Rimini's documents and Rimini's engineers told

19 you, other than your experience?

20   A Well, I was going to say my experience counts   08:28:25

21 for a reasonable amount in understanding those documents

22 and talking with engineers But those -- that's the

23 material that I've used to form my opinions

24   Q Did you do anything in connection with your work

25 in this proceeding to verify the accuracy of Rimini's   08:28:41

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7 (Pages 22 - 25)

1 representations either in documents or provided to you
2 orally?
3   MR VANDEVELDE: Objection   Vague
4   THE WITNESS: I've listened to and read material
5 from Rimini Street engineers, and based on what I've   08:29:00
6 read, formed opinions   But I -- so if the question is --
7 I'm not sure what the question is
8   Those are the -- as I've stated, those are the
9 sources of information that I've used, as well as my
10 experience, to understand the material   08:29:17
11   Q   BY MR SMITH: Did you undertake any factual
12 investigation to verify the accuracy of any Rimini
13 representation that was made to you?
14   MR VANDEVELDE: Objection   Vague, asked and
15 answered   08:29:34
16   THE WITNESS: If there were terms that I didn't
17 understand, I'm sure I looked them up   For example, I --
18 to understand some aspect of PeopleSoft, I would have
19 looked at some PeopleSoft documentation, which is not
20 Rimini Street documentation   08:29:47
21   But if you're asking just in terms of Rimini's
22 processes, then I relied on Rimini engineers and Rimini
23 personnel
24   Q   BY MR SMITH: Did you personally do anything to
25 confirm that no Rimini developer has copied Oracle code   08:30:06

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1 to its systems since the Injunction went into effect?
2   MR VANDEVELDE: Objection   Asked -- asked and
3 answered, outside the scope
4   THE WITNESS: My -- my purpose here was to
5 analyze and evaluate what Ms Frederiksen-Cross wrote in   08:30:22
6 her report, and to the extent that I had questions for
7 the Rimini engineers, information about what she wrote,
8 that's what I did   I was engaged to evaluate and analyze
9 her report
10   Q   BY MR SMITH: You testified that if you had   08:31:05
11 questions for the Rimini engineers about what Barbara
12 Frederiksen-Cross wrote, you would ask them; is that
13 correct?
14   MR VANDEVELDE: Misstates prior testimony
15   THE WITNESS: I think I talked about both FTI   08:31:20
16 and Rimini engineers as being available if I had
17 questions
18   Q   BY MR SMITH: And did you ask any Rimini
19 engineers in connection with your reports in this
20 proceeding any questions?   08:31:34
21   A   That would be outlined in my report   So all the
22 footnotes in my report and rebuttal report I think with
23 reasonable accuracy, if not with total accuracy, and I
24 believe it's total accuracy, all the people with whom
25 I've had conversations with in regard to this report   08:31:55

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1   Q. And based upon your report, it appears that the
2 only conversation you had was with Mr. Butler; is that
3 correct?
4   A. Again, I'd have to review the footnotes to
5 ensure that what you're saying is correct.   08:32:09
6   Q. Do you recall having any discussions with any
7 Rimini personnel other than Mr. Butler in connection with
8 the preparation of your reports in this proceeding?
9   A. I'd want to review, again, completely my report
10 to ascertain whether what you're saying is correct.   08:32:24
11   Q. Okay. If you'd go to Exhibit 1856, which is
12 your rebuttal report.
13   A. Yes.
14   Q. And if you go to Exhibit B, which starts on
15 page 1 -- well --   08:32:44
16   A. I've got it.
17   Q. You've got it. Okay.
18   At the back of this document, page 28 and 29,
19 there's a list of interviews and demonstrations.
20   A. Yes, I see that.   08:33:06
21   Q. Okay. And all but one of these interviews and
22 demonstrations that you list in this Exhibit B took place
23 before your August 2018 deposition at Rimini II; correct?
24   A. I don't recall that, but I'm sure we could go
25 through and ascertain whether that is, in fact, the case.   08:33:47

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1   Q. Okay. Do you recall any of the interviews
2 and/or demonstrations that are listed here in this
3 Exhibit B as taking place prior -- or after the
4 deposition of you in August of 2018?
5   A. In my report, as you mentioned previously, I   08:34:06
6 have a footnote where I discussed an interview with James
7 Butler.
8   Q. Yeah. Is that the only one you recall taking
9 place after your last deposition in August of 2018?
10   A. That's what I recall at this time, that's   08:34:23
11 correct.
12   Q. And you spoke with Mr. Butler about the 934
13 documents that hit on Ms. Frederiksen-Cross's search for
14 files on any servers that contain Oracle copyright
15 statements; right?   08:34:47
16   MR. VANDEVELDE: Objection. Misstates
17 documents.
18   THE WITNESS: That was -- those -- that's what I
19 cite in my report and they're among other things. So if
20 we look through my report for notes that reference that   08:35:03
21 interview, I think you'll see two such footnotes.
22   Q. BY MR. SMITH: Okay. I maybe missed the other
23 one. What was the other one with respect to Mr. Butler?
24   A. There is a footnote on page 114 and there's a
25 footnote on page 7 that reference my interview with   08:35:20

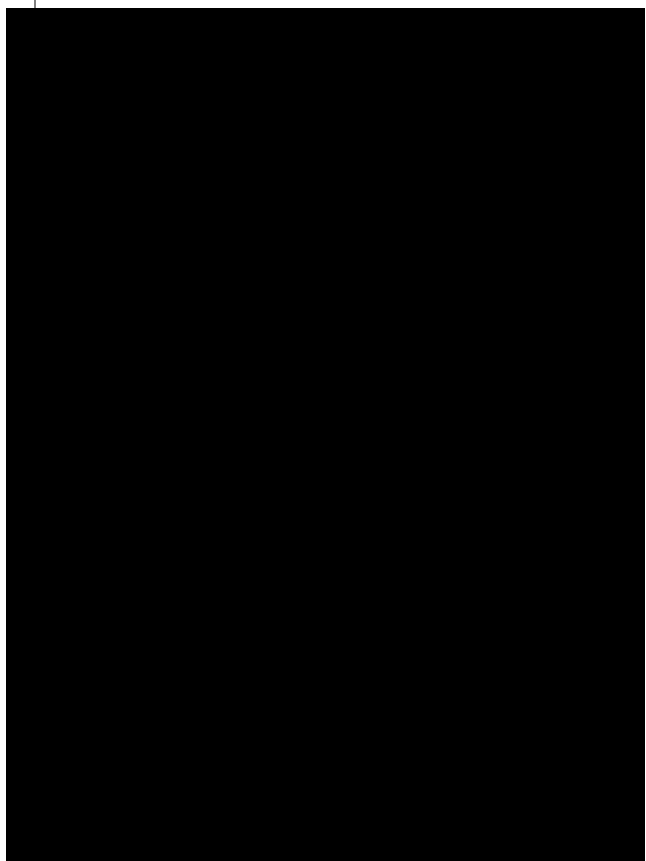Page 29

8 (Pages 26 - 29)

1 Mr Butler

2   Q Understood

3   So your discussions with Mr Butler related to

4 the 934 documents identified by Ms Frederiksen-Cross in

5 her report as well as files on the Salesforce system; is   08:36:03

6 that correct?

7   A That's correct

8   Q Did you talk to Mr Butler about anything else

9 other than those two topics?

10   A On that, I don't recall all the things that we   08:36:18

11 talked about, but there are the two references in my

12 report to that conversation

13   Q Okay Do you know if FTI Consulting performed

14 any interviews of any Rimini individuals?

15   A I don't know   08:36:35

16   Q Other than your discussion with Mr Butler, did

17 you personally do anything to confirm that no Rimini

18 developer has copied Oracle code to its systems since the

19 Injunction went into effect?

20   MR VANDEVELDE: Asked and answered, outside the   08:37:07

21 scope

22   THE WITNESS: I want to reiterate that my

23 capture was in alignment with that of

24 Ms Frederiksen-Cross's report, and that's the task that

25 I was given   08:37:22

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1   Q BY MR SMITH: So did you do anything to confirm

2 whether or not Rimini developers copied Oracle code to

3 its systems since the Injunction went into effect?

4   MR VANDEVELDE: Asked and answered,

5 argumentative   08:37:34

6   THE WITNESS: I analyzed Ms Frederiksen-Cross's

7 allegations, and in my report, I explained why I don't

8 believe they are well-founded

9   Q BY MR SMITH: Are you going to refuse to answer

10 my question? I'm just asking if you did anything to   08:37:48

11 confirm whether or not a Rimini developer has copied

12 Oracle code to its systems since the Injunction went into

13 effect

14   MR VANDEVELDE: Asked and answered, fourth

15 time   08:38 00

16   THE WITNESS: What I did was analyze and

17 evaluate Ms Frederiksen-Cross's allegations and wrote

18 about why I think they are incorrect in her analysis of

19 how the Injunction is not being maintained -- upheld, and

20 that's the analysis and evaluation that I did   08:38:19

21   Q BY MR SMITH: Did that analysis and evaluation

22 include any work to confirm that a Rimini developer did

23 or did not copy Oracle code onto Rimini systems after the

24 Injunction was put in place?

25   MR VANDEVELDE: Asked and answered for the   08:38:36

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1 fifth time

2   THE WITNESS: To the extent that

3 Ms Frederiksen-Cross wrote that such episodes happened,

4 I evaluated and analyzed her allegations, and as I said,

5 indicated that they were not well-founded That was the   08:38:49

6 evaluation and analysis that I did with respect to the

7 Injunction and Rimini practice

8   Q BY MR SMITH: Have you ever had the opportunity

9 to personally observe Rimini's software development team

10 perform testing of updates?   08:39:08

11   MR VANDEVELDE: Objection Vague

12   THE WITNESS: If -- I -- I want to make sure I

13 understand the question

14   I think what you're asking is did I watch Rimini

15 engineers log into a client environment and perform an   08:39:21

16 update

17   Q BY MR SMITH: Correct

18   A I did not observe that

19   Q Did you ever observe a Rimini engineer logging

20 into a client environment to update or fix files?   08:39:36

21   MR VANDEVELDE: Objection Vague

22   THE WITNESS: I did not observe Rimini engineers

23 logging into a client system in the act of performing an

24 update

25   Q BY MR SMITH: Did you observe Rimini engineers   08:39:55

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1 logging into a client system for any purpose?

2   A I did not see Rimini engineers log into a client

3 system

4   Q Did you observe any Rimini engineers creating a

5 Dev Instruction?   08:40:11

6   A I did not witness the creation of a Dev

7 Instruction in real time, no

8   Q Did you witness the creation of a tech spec in

9 real time?

10   MR VANDEVELDE: What did you say, tech --   08:40:27

11   MR SMITH: Tech spec

12   THE WITNESS: I believe you're speaking of the

13 JD Edwards equivalent of a Dev Instruction in this case

14   Q BY MR SMITH: Yes, a technical specification

15 I call them tech specs   08:40:40

16   A I did not see the real-time creation of a tech

17 spec

18   Q Is there a reason why you did not speak with any

19 of the eight individuals you spoke with previously at

20 Rimini to discuss with them Rimini's compliance with the   08:41:07

21 Injunction?

22   MR VANDEVELDE: Objection Vague

23   THE WITNESS: As I've stated, in evaluating and

24 analyzing Ms Frederiksen-Cross's opinions, I had access

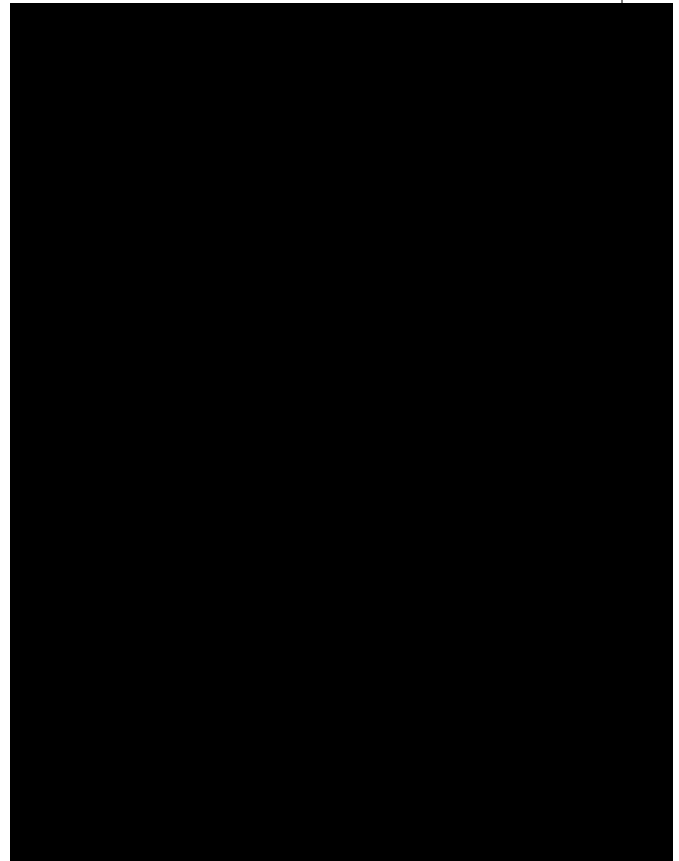25 to the information I needed to do such evaluation and   08:41:26
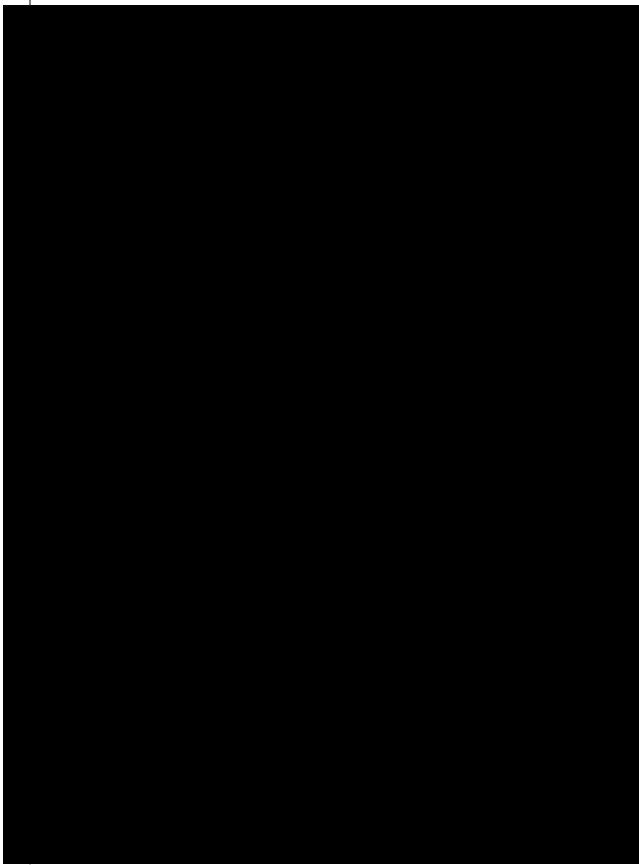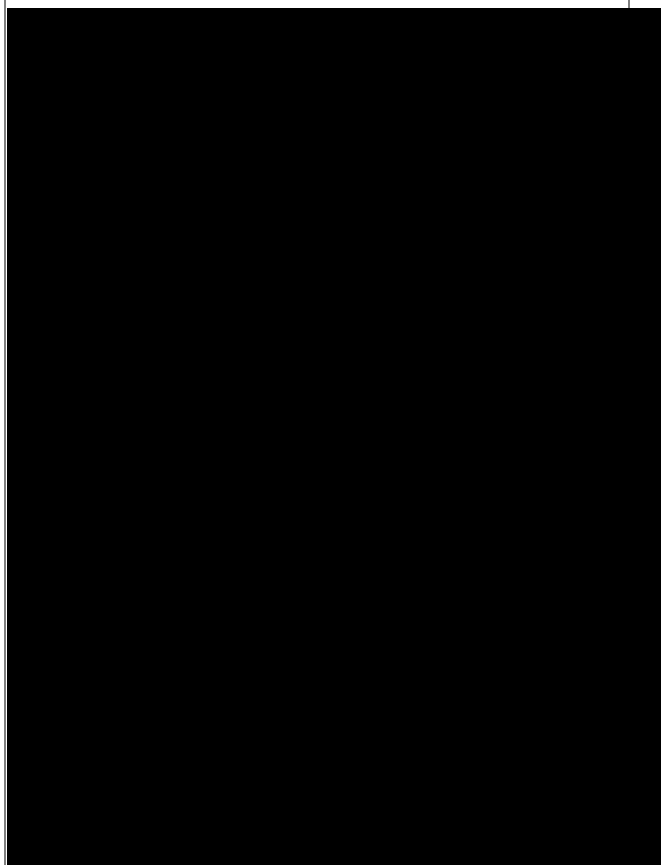
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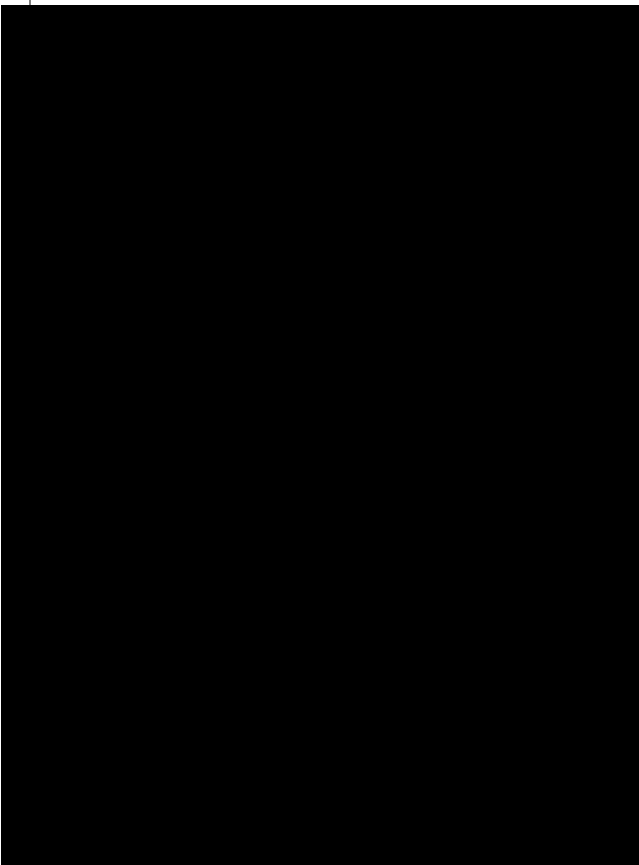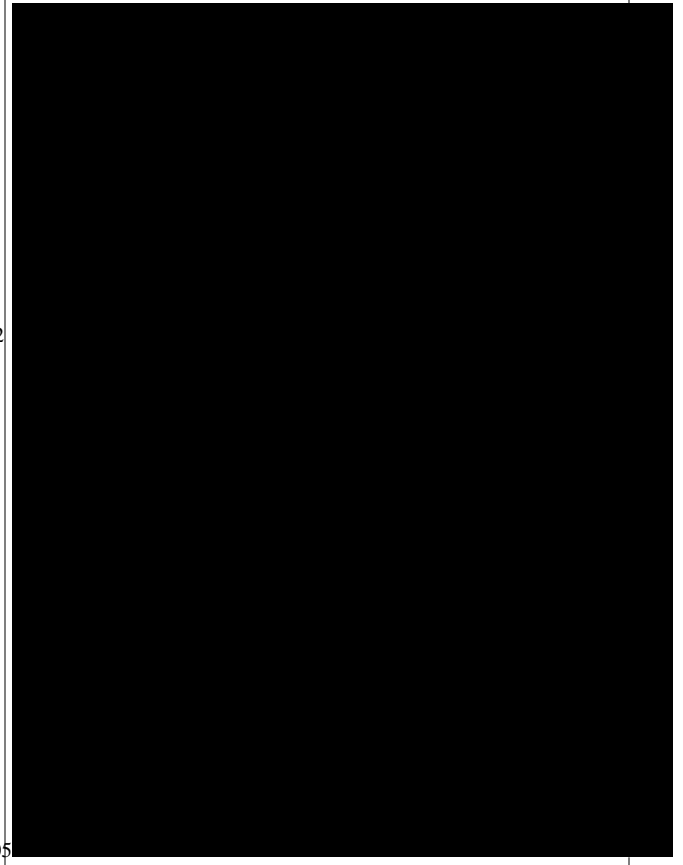
39 (Pages 150 - 153)
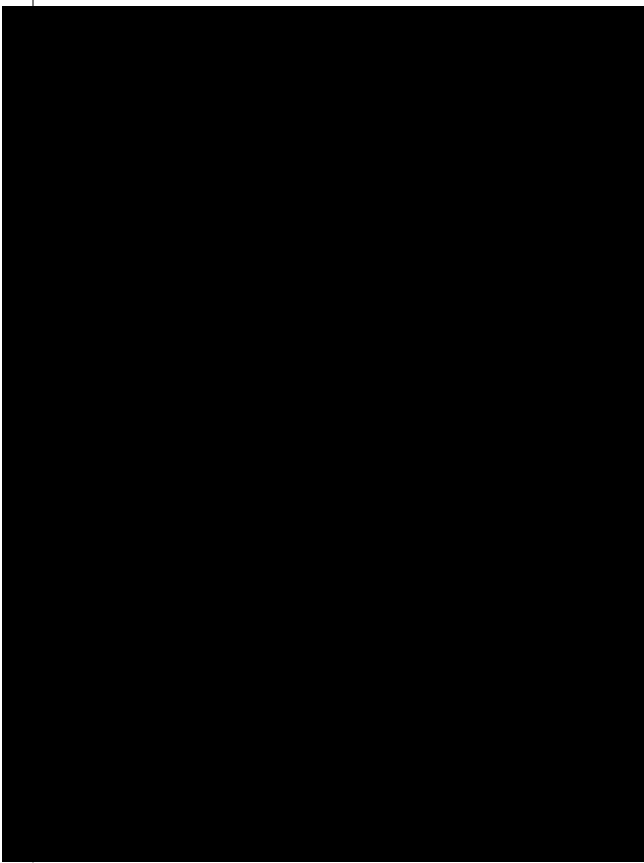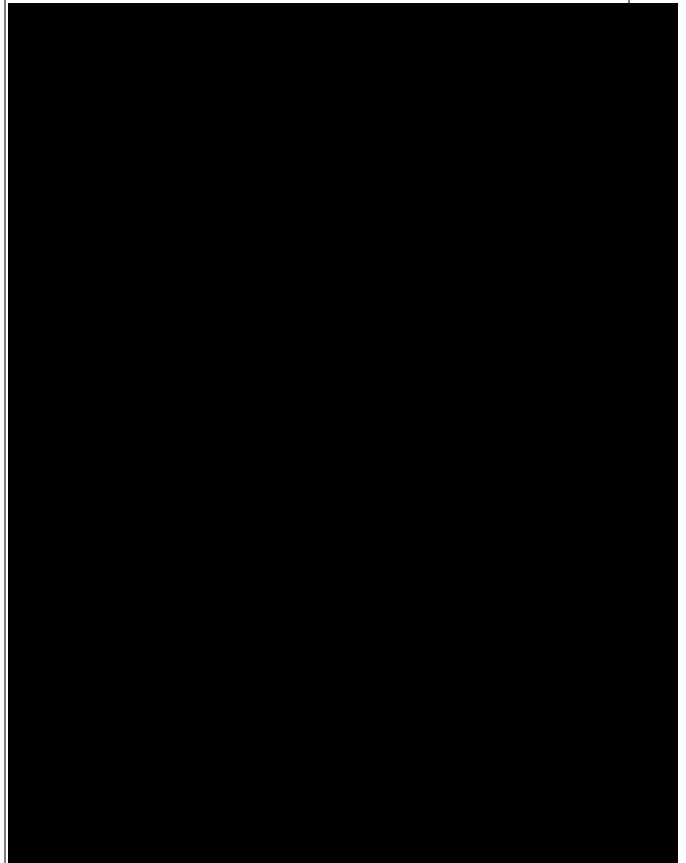
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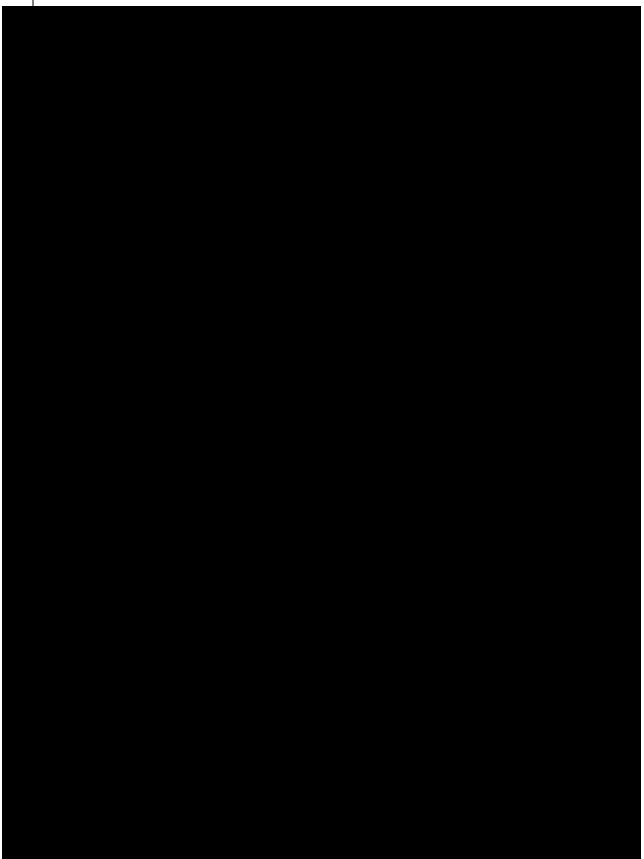Page 155

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1 before?

2   A   The first time that I bought a computer myself

3 was 1980 or 1981

4   Q   And at that time there was no internet and there

5 was no cloud; right?   17:07:21

6   A   Technically, there was an internet

7   Q   There was no internet for use in 1981, outside

8 of military or government use; correct?

9   A   Or academic use

10   Q   Or academic use?   17:07:36

11   A   Yes   There was no commercial use of the

12 internet at that juncture, that's correct

13   Q   In your report, paragraph -- well, it's on

14 page 51 and it's footnote 141   You reference

15 encyclopedia definition of colocation at PCMAG com;   17:08:06

16 correct?

17   A   That's an accurate representation of my

18 footnote

19   Q   Did you review the PC Magazine -- strike that

20   What is the PC Magazine encyclopedia?   17:08:22

21   A   It's a resource available on the web to explain

22 terminology and vocabulary related to computing

23   Q   And do you consider it to be a legitimate

24 source?

25   A   I consider it to be a reasonable reference and   17:08:43

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1 that the definition of colocation that's there agrees

2 with my understanding of what colocation means, yes.

3   Q.   Okay.   Did you review PC Magazine's

4 encyclopedia's definition of the term "computer system"?

5   A.   Not that I recall.   17:09:07

6   Q.   Would you be surprised to know that it does not

7 include any cloud components?

8   MR. VANDEVELDE: Assumes facts, vague.   If you

9 want to put it in front of him, you can.

10   THE WITNESS: Your question is would I be   17:09:20

11 surprised.   I am very rarely surprised these days.

12   Q.   BY MR. SMITH: In your report, you include

13 virtual machines in your definition of computer resource;

14 right?

15   A.   I'm going to look in my report for virtual   17:09:40

16 machine.   I just -- I want to make sure that you've used

17 the term "virtual machine" in conjunction with computing,

18 of course.

19   Q.   Yeah.   I'm referring to paragraph 167, where you

20 write in the second sentence: "The client is able to   17:10:01

21 impose access restrictions on other users" -- strike

22 that.

23   Third sentence.   Then you go on: "And the

24 client can move or delete the computing resource, e.g.,

25 the virtual machine containing the client's software   17:10:14

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1 environments "

2   A   Yes   So the "e g " makes it clear that a

3 virtual machine is an example of a computing resource

4   Q   Okay   And that was my question: You include

5 virtual machines in your definition of computer resource;   17:10:28

6 right?

7   MR VANDEVELDE: Asked and answered

8   THE WITNESS: I'm explaining computer re --

9 computing resource here in -- as part of this paragraph,

10 and as an example of such a computing resource, I do   17:10:43

11 include the word "virtual machine," yes

12   Q   What is a virtual machine?

13   A   At a high level, it's software that emulates a

14 particular hardware environment

15   Q   What do you mean by "emulates"?   17:11:05

16   A   If I buy a server and install an operating

17 system on it, and that server has a certain amount of

18 memory and a certain amount of disk space, and it allows

19 a certain number of network ports to be open, then that

20 server, which is hardware, in conjunction with the   17:11:25

21 operating system that's running on it and the memory and

22 the disk that's associated with it, comprises a computing

23 resource

24   Now, it's possible that you can create software,

25 in this case, a virtual machine, and the keyword is   17:11:41

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1 virtual, which as I understand it, means "not really."

2 So it's not really a machine, but functionally, it's the

3 same as a machine.

4   So rather than buying the hardware and

5 installing the memory and installing the disk and   17:12:00

6 ensuring that the right number of ports are there, what I

7 have is software that is for all intents and purposes

8 meaning functionally the same as if I have hardware, but

9 in fact, it is software that can be configured far more

10 easily than the hardware running the operating system.   17:12:22

11   So the virtual machine gives you the advantage

12 of not having to, for example, have physical memory

13 because you can configure the virtual machine so that it

14 has more memory by simply changing some software

15 parameters rather than by going to buy memory.   17:12:41

16   So the software allows the flexibility of an

17 actual machine, whereas because it's software, it's much

18 easier to configure and build at scale than buying new

19 hardware.

20   Q.   Okay.   In paragraph 174 of your report, you   17:12:57

21 discuss ultimate control or control of a software

22 environment; correct?

23   Sorry, are you looking at a different paragraph?

24   A.   I do not use the word "ultimate."

25   Q.   Yeah.   You talk about control.   I thought the   17:14:29
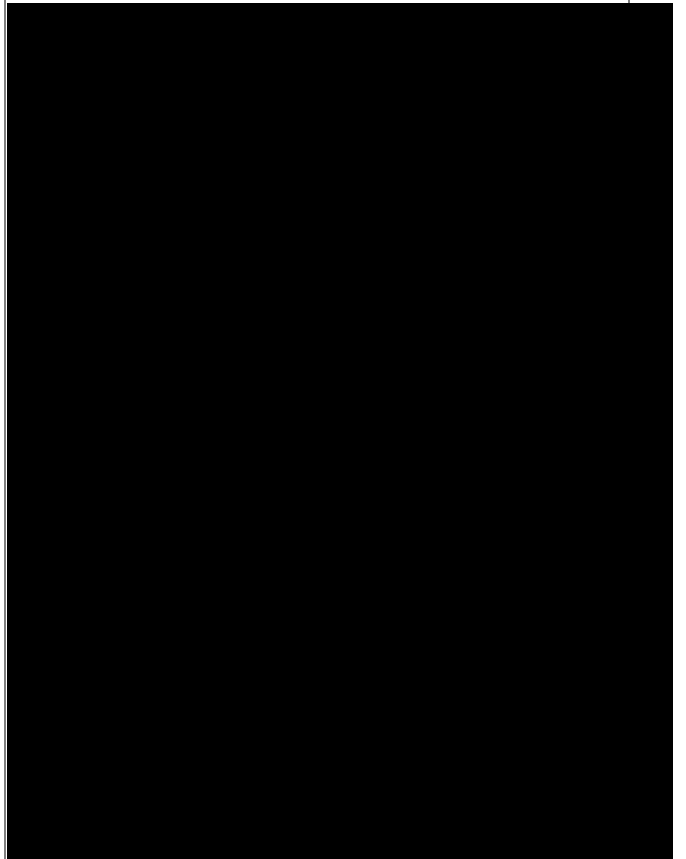
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68 (Pages 266 - 269)

1   I've also explained in my previous answers that

2 in analyzing whether Rimini Street had, for example,

3 reproduced or prepared derivative works, that we have to

4 analyze the entirety of what that, for example, tech spec

5 might be, to determine if, in fact, it is a reproduction   18:30:07

6 or a derivative work   And simply including a variable

7 name would not mean that it is either a reproduction or a

8 derivative work as I've explained previously today

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23   THE WITNESS: The Injunction uses the phrase

24 "software source code," and as I've indicated before,

25 Rimini believes that refers to closed code   18:29:52

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17   MR SMITH: Well, strike that

18   Let's go off the record for one second   I think

19 I only have a few more questions, and then we'll wrap it

20 up   18:32:46

21   MR VANDEVELDE: Okay

22   THE VIDEOGRAPHER: We are going off the record

23 The time is 9:32 p m

24   (Recess)

25   THE VIDEOGRAPHER: We are back on the record   18:42:04

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 1   STATE OF CALIFORNIA    ) ss:

 2   COUNTY OF MARIN        )

 3

 4        I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do

 5   hereby certify:

 6        That the foregoing deposition testimony was

 7   taken before me at the time and place therein set forth

 8   and at which time the witness was administered the oath;

 9        That testimony of the witness and all objections

10   made by counsel at the time of the examination were

11   recorded stenographically by me, and were thereafter

12   transcribed under my direction and supervision, and that

13   the foregoing pages contain a full, true and accurate

14   record of all proceedings and testimony to the best of my

15   skill and ability.

16        I further certify that I am neither counsel for

17   any party to said action, nor am I related to any party

18   to said action, nor am I in any way interested in the

19   outcome thereof.

20        IN WITNESS WHEREOF, I have subscribed my name

21   this 2nd day of July, 2020.

22

23

24   _____

25        LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462
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